Filed 3/17/09 Husany v. City of Los Angeles CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GUY HUSANY et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, Defendant and Respondent.	B209541 (Los Angeles County Super. Ct. No. LC080231)

APPEAL from a judgment of the Superior Court of Los Angeles County, James A. Kaddo, Judge. Reversed.

David Hoffman for Plaintiffs and Appellants.

Rockard J. Delgadillo, City Attorney and Blithe S. Bock, Deputy City Attorney for Defendant and Respondent.

Plaintiffs were attacked by a swarm of bees in a public park and filed suit against the City of Los Angeles (City), alleging a dangerous condition of public property. The trial court sustained the City's demurrer without leave to amend on the ground that no dangerous condition of public property was alleged. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

On January 16, 2008, plaintiffs filed their complaint against the City alleging a single count of negligence based upon a dangerous condition of public property. In the complaint, and their notice of claim to the City under the Tort Claims Act, plaintiffs allege the following: (1) on April 29, 2007, they were attending a festival at a public park; (2) while they were so engaged, one of the minor plaintiffs knocked over a plain orange cone; (3) the cone had covered the in-ground hive of a swarm of bees; (4) the bees immediately attacked and stung the plaintiffs, necessitating emergency medical attention; (5) the City knew or should have known of the underground hive; (6) the City failed to take reasonable efforts to eradicate the hive or sufficiently warn of its presence; and (7) it was reasonably foreseeable that children would play around the cone, and then be stung by the bees.

The City successfully demurred on the basis that bees are transitory wild creatures, such that their presence on the City's land cannot constitute a dangerous condition of public property for which the City can be held liable. Plaintiffs appealed. On appeal, the City chose not to file a respondent's brief. Appearing at oral argument, the City explained that it did not contest plaintiffs' appeal.

DISCUSSION

"Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and . . . [¶] (b) The public entity had actual or constructive notice of the dangerous condition . . . a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (Gov. Code, § 835.) " 'Dangerous condition' means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." (Gov. Code, § 830, subd. (a).)

On appeal, plaintiffs contend that they have sufficiently alleged a dangerous condition of public property, in their allegations of the presence, not of transitory *bees*, but of a fixed underground *hive*. The City has chosen not to contest the point. We concur; the presence of the hive itself can constitute a dangerous condition of public property.

DISPOSITION

The judgment is reversed. The plaintiffs shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.